

**Statement of
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House Natural Resources Committee
Subcommittee on National Parks, Forests, and Public Lands
H.R. 2944, Southern Arizona Public Lands Protection Act
January 21, 2010**

Thank you for the invitation to testify on H.R. 2944, the Southern Arizona Public Lands Protection Act. The Department of the Interior supports the goals of the legislation, which in part seeks to enhance and assist Pima County's Sonoran Desert Conservation Plan (SDCP). However, we are concerned that the scope of the bill may be broader than intended and may lead to some unanticipated consequences. We would like to work with the Congress as it crafts legislation to address the legitimate concerns of Pima County.

We defer to the Department of Agriculture on all issues affecting lands within the Coronado National Forest in Pima and Santa Cruz Counties, including matters related to the proposed Rosemont Mine.

Background

Pima County, Arizona, stretches for nearly 200 miles across southern Arizona and encompasses over 9,000 square miles (nearly 6 million acres) of land. Approximately 380,000 surface acres within the county are administered by the Bureau of Land Management (BLM). Additionally, the BLM manages over 450,000 acres of Federal mineral estate underlying non-Federal surface within Pima County.

Mining, particularly of copper, has been a significant part of the history of this part of the country. Other significant minerals mined in Pima County include molybdenum and limestone. Today, there are nearly 3,500 existing mining claims (encompassing about 70,000 acres) in Pima County on the Federal mineral estate.

Under current law, unless specifically closed to mineral entry, mining claims can be located on Federal lands or interest in lands managed by the BLM, including most National Forest System lands which were reserved from the public domain. Areas that are typically withdrawn from mineral entry include National Parks and Monuments, Wildlife Refuges, American Indian Reservations, acquired lands, and designated wilderness. In Pima County, a number of areas are not open to mineral entry, including the Tohono O'odham Nation and Pascua Yaqui Nation lands; the Saguaro National Park and Organ Pipe National Monument managed by the National Park Service; the Buenos Aires and Cabeza Prieta National Wildlife Refuges managed by the U.S. Fish and Wildlife Service; wilderness areas managed by the U.S. Forest Service and the BLM; and the BLM's Ironwood Forest National Monument and Las Cienegas National Conservation Area.

Public Law 87-747, enacted in 1962, withdrew from new mining claims approximately 475,000 acres of land located in the heart of Tucson and the immediately surrounding

communities. This action was taken to address problems that had arisen from the high incidence of split estate in the Tucson area. A split estate often arises when the Federal government transfers the interest in surface land out of Federal ownership but retains the mineral rights. A significant amount of residential housing was being constructed on split estate lands during that time period, and private property owners were faced with the prospect of having mining claims filed on the Federal mineral estate underlying their homes. This law prohibited such mining claims.

Over the last fifty years, the population of Pima County, particularly in the Tucson area, has grown dramatically. In 1998, in an effort to address a multitude of issues related to that growth, Pima County engaged in a process that resulted in the Sonoran Desert Conservation Plan (SDCP). The SDCP provides guidance for land use, land conservation, and multi-species conservation in Pima County. One element of the SDCP has been the acquisition by the county of lands specifically for conservation purposes and meeting the needs of its Multi-Species Conservation Plan (MSCP).

About half of the lands acquired by the county are split estate lands with underlying Federal mineral estate. Unless specifically withdrawn, those lands are open to mining claims as well as discretionary acts of the Federal government, including the sale of mineral materials (such as sand and gravel), land sales, or land exchanges. Those mineral interests are managed by the BLM.

Of particular recent concern in the local community is a proposal by Arizona Portland Cement (APC) for a limestone quarry for the production of cement southeast of Tucson. The proposed quarry is partially within Pima County's environmentally sensitive Davidson Canyon Natural Preserve on lands owned by the State of Arizona. Pima County owns over 9,000 acres in the surrounding Davidson Canyon area; the BLM manages the mineral estate on approximately one-third of those acres. APC possesses unpatented mining claims on the underlying Federal mineral estate associated with the proposed quarry. A second proposed quarry would also include adjacent State Trust Lands which are leased to APC by the state of Arizona. There has been widespread public opposition to mining activity within or adjacent to Davidson Canyon.

H.R. 2944

H.R. 2944 has three provisions. First, section 2(1), subject to valid existing rights, withdraws from the land laws, mining law, mineral leasing, geothermal leasing, and mineral materials laws all Federal lands or interest in lands within the Coronado National Forest in Santa Cruz and Pima Counties in Arizona. The Department of the Interior defers to the Department of Agriculture on section 2(1).

Section 2(2) of H.R. 2944 would withdraw the mineral estate underlying lands owned by Pima County from the public land laws, mining laws, mineral leasing, geothermal leasing and mineral materials laws, subject to valid existing rights. The implications of this provision are extensive. Among the many actions that would be prohibited are the sale or exchange of mineral interests, the filing of new mining claims, and the sale of any mineral materials such as sand and gravel for road construction. The withdrawal, however, would not prevent development of existing valid mining claims.

The Department of the Interior understands Pima County's concern about potential actions that could undermine the SDCP and result in degradation to lands acquired for conservation purposes. Undoubtedly, many of these lands deserve protection. However, we believe there may be significant unintended consequences of the proposed withdrawals, as well as diminution in the value of the Federal mineral estate.

Under the proposed withdrawal of the Federal mineral estate from "all forms of entry, appropriation, and disposal under the public land laws" (section 2(2)(A)), the BLM would be unable to exchange the mineral estate with the county. Section 2(2)(A) would prevent both the BLM and the county from using exchange authority to consolidate their land holdings to further the objectives of the SDCP.

A withdrawal from the mineral materials laws also would prohibit the BLM from selling or granting free use permits to the county or the Arizona Department of Transportation for sand and gravel from the mineral estate underlying county lands. While this withdrawal may be appropriate where lands were acquired for conservation purposes, there may be other locations where local sand and gravel operations may reasonably support beneficial public uses, such as county or state road maintenance.

Before Congress moves forward with such a significant withdrawal of the Federal mineral interest, we would recommend an analysis of the full implications and consequences. To ensure any legislative withdrawal is appropriately targeted, we urge the Congress to propose a process with full and open public participation, particularly given the nature and scale of the proposed withdrawal.

Finally, section 2(3) of H.R. 2944 would withdraw the Federal mineral estate managed by the BLM within Pima County "from entry, location or patent under the general mining laws," subject to valid existing rights. In conjunction with the withdrawal in section 2(1)(B) of Forest System lands, this section would prevent the filing of any new Federal mining claims in Pima County. The withdrawal would not prevent development of existing valid mining claims.

Again, we are sensitive to the desire of Pima County residents and their elected Representatives to protect and conserve lands with important resource values. However, this approach may not need to be as far-reaching as the current draft. Though many areas of Pima County have been extensively mined, other areas have yet to be fully explored and may yield significant resources. For example, lands to the west of the Sierrita open pit copper mine and to the east of the Ajo copper mine are less environmentally-sensitive lands and extensive exploration has not taken place in these areas which have the potential for undiscovered deposits. Any future opportunity to evaluate and make decisions about a potential discovery would be foregone under the proposed withdrawal.

For this reason, the BLM believes that more complete information about the Federal mineral resources and the implications of a mining withdrawal is needed before the Congress imposes a permanent withdrawal across such a wide area. Including the public in an open and transparent

public process would help in identifying and avoiding unintended consequences and in reaching a better-informed decision.

The BLM would like to work with the Sponsor and the Committee to develop some alternatives to H.R. 2944's extensive withdrawals. For example, Congressionally imposed, but term limited withdrawals, of the county's sensitive lands while a comprehensive review is undertaken could provide needed protections for both Pima County's interests as well as the public's value in the Federal mineral estate.

Conclusion

The BLM looks forward to working with the Congress to modify H.R. 2944 to achieve Pima County's goals to protect their acquired lands through targeted actions, such as the sale or exchange of BLM mineral estate underlying county lands. We applaud Pima County's proactive efforts through the SDCP to address the valuable natural resources of this diverse Sonoran landscape. We look forward to continuing to work with Pima County in that effort.